

News from Ed Markey

United States Congress
FOR IMMEDIATE RELEASE
October 3, 2002

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Charges Against Enron's Fastow Reveal Supporting Role of Financial Firm

Markey Introduces Bill to Eliminate Liability Protection for Enablers of Fraud

Washington, D.C.: Representative Ed Markey (D-MA), a senior member of the House Energy and Commerce Committee, and former Chairman of the Subcommittee on Telecommunications and Finance, introduced legislation today to eliminate the exemption that shields accounting firms, investment banks, and other professional services firms from liability in private suits when they assist their clients commit securities fraud.

According to the Department of Justice's criminal complaint, Mr. Fastow and others at Enron relied on the assistance of an outside firm to perpetrate their fraudulent activities. The Department's complaint states, 'Enron at least once enlisted a major financial institution to assist in its financial statement manipulation.' During Senate hearings in July, the financial institution was identified as Merrill Lynch & Co.

Rep. Markey said, "It's clear from the criminal charges that Mr. Fastow did not act alone. His fraudulent activities were aided and abetted by professionals with the specialized knowledge and expertise needed to structure the complex financial transactions that Mr. Fastow used to enrich himself at the expense of investors, retirees, and other innocent victims. It is outrageous that the securities laws prevent these individuals from bringing private suits against those that helped Mr. Fastow and his cohorts spin their elaborate web of fraud."

"Today I am introducing the *Stop Enablers of Fraud Act*. This legislation overturns the Supreme Court's decision in *Central Bank* and restores the ability of individuals to bring private suits against those who aid and abet a securities fraud. For decades prior to the Court's decision, firms that assisted their clients to perpetrate fraud had been held accountable for their role in fraudulent activities. The Justice Department complaint states that Mr. Fastow and others at Enron relied on an outside firm to assist them in their shady dealings. Individuals who have been defrauded as a result of Mr. Fastow's deceptive maneuvers should be able to bring suit against companies that helped him along the way," Markey continued.

While the SEC is empowered to bring actions against the so-called 'aiders and abettors' of securities fraud, the 1994 Supreme Court decision in *Central Bank of Denver N.A. v. First Interstate Bank of Denver* precludes private parties from suing companies that help their clients commit fraud. In May 2002, Rep. Markey questioned the SEC about its ability to pursue aiders and abettors, given constraints on its resources and personnel. In its response, the SEC noted that 'OT0he Commission could undoubtedly use additional resources' and cited its increased workload from financial fraud and reporting cases.

“Empowering individuals to hold accountable the enablers of securities fraud will force these companies to consider the serious litigation risks before they assist their clients engage in fraudulent activities. The threat of litigation from private parties will serve as a much needed deterrent and an avenue for recovery for defrauded investors that is currently blocked by Central Bank,” Rep. Markey concluded.

A copy of the bill may be found at www.house.gov/markey.

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